

considered in that analysis, as well as parties to be consulted in conducting such analysis. Further, the substitute directs the Secretary to share the information developed through the analysis and submit a report to the appropriate Congressional Committees within 30 days of completion of all the modeling exercises. In performing the physical testing required under this section, the Conference expects that the Secretary will take into account other Federal agencies and resources with applicable expertise in such matters.

Section 1520. Railroad Threat Assessments

There is no comparable House provision.

There is no comparable Senate provision.

The Conference substitute requires the Secretary of Homeland Security to implement a threat assessment screening program for all relevant transportation employees within one year after the date of enactment, including a name-based check for all employees against the consolidated terrorist watch list and an immigration status check, similar to the threat assessment conducted by the U.S. Coast Guard with regard to port workers.

Section 1521. Railroad Employee Protections

There is no comparable House provision.

Section 1430 of the Senate bill updates the existing railroad employee protections statute to protect railroad employees from adverse employment impacts due to whistleblower activities related to rail security. The provision precludes railroad carriers from discharging, or otherwise discriminating against, a railroad employee because the employee, or the employee's representative: provided, caused to be provided, or is about to provide, to the employer or the Federal government information relating to a reasonably perceived threat to security; provided, caused to be provided, or is about to provide testimony before a Federal or State proceeding; or refused to violate or assist in violation of any law or regulation related to rail security.

The Conference substitute adopts a modified version of the Senate language. It modifies the railroad carrier employee whistleblower provisions and expand the protected acts of employees, including refusals to authorize the use of safety-related equipment, track or structures that are in a hazardous condition. Additionally, the Conference substitute enhances administrative and civil remedies for employees, similar to those in subsection 42121(b) of title 49, United States Code. The language also provides for de novo review of a complaint in Federal District Court if the Department of Labor does not timely issue an order related to the complaint. The Conference substitute also raises the cap on punitive damages that could be awarded under this provision from \$20,000 to \$250,000.

The Conference notes that railroad carrier employees must be protected when reporting a safety or security threat or refusing to work when confronted by a hazardous safety or security condition to enhance the oversight measures that improve transparency and accountability of the railroad carriers. The Conference, through this provision, intends to protect covered employees in the course of their ordinary duties. The intent of this provision is to ensure that employees can report their concerns without the fear of possible retaliation or discrimination from employers.

Section 1522. Security Background Checks of Covered Individuals

There is no comparable House provision.

There is no comparable Senate provision.

The Conference substitute adopts a provision that would ensure that if the Secretary

of Homeland Security issues a rule, regulation or directive requiring private employers to conduct security background checks for railroad workers, that it include a redress process for such workers similar to that provide under the Transportation Worker Identification Credential (TWIC) final rule, as required by 46 U.S.C. 70105 (c). The Secretary is also required to update private employers conducting background checks regarding guidance that has been issued and ensure that any future guidance issued on the topic is consistent with this provision. The Conference substitute requires the Secretary to issue a regulation prohibiting a railroad carrier or contractor or subcontractor to a railroad carrier from knowingly misrepresenting to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check.

It is not the intent of the Conference that this provision imply that it favors the Department of Homeland Security (DHS) requiring private employers to undertake security background checks. Rather, the Conference intends for the provision to ensure that if such regulations were ever to be promulgated by DHS, that it would contain due process protections similar to those in the TWICE rule would be available for employees. The Conference intends for private employees to retain all rights and authorities afforded them otherwise as private employees.

Section 1523. Northern Border Railroad Passenger Report

There is no comparable House provision.

Section 1428 of the Senate bill requires the Secretary, in consultation with the Transportation Security Administration (TSA), the Secretary of Transportation, heads of other appropriate Federal Departments and Agencies, and Amtrak, within one year after the date of enactment, to submit a report to Congress that contains: a description of the current system for screening passengers and baggage on rail service between the United States and Canada; an assessment of the current program to provide pre-clearance of airline passengers between the United States and Canada; an assessment of the current program to provide pre-clearance of freight railroad traffic between the United States and Canada; information on progress by the Department and other Federal agencies towards finalizing a bilateral protocol with Canada that would provide for pre-clearance of passengers on trains operating between the United States and Canada; a description of legislative, regulatory, budgetary, or policy barriers to providing pre-screened passenger lists for such passengers; a description of the Canadian position with respect to pre-clearance; a draft of any changes to Federal law necessary to allow for pre-screening; and a feasibility analysis of reinstating in-transit inspections onboard international Amtrak trains.

The Conference substitute adopts the Senate provision and includes language to ensure that any activities carried out under this section that could affect privacy, civil liberties or civil rights will receive privacy impact assessments. The Conference notes the significant delays that routinely plague Amtrak trains due to screening of passenger at or near the U.S.-Canadian border and that these delays both hamper international rail travel and increase costs for Amtrak, and therefore the Federal government. The Conference expects the Secretary of Homeland Security to work, in cooperation with Am-

trak and the Canadian Government, to take steps to minimize such delays, as soon as practicable.

Section 1524. International Railroad Security Program

There is no comparable House provision.

There is no comparable Senate provision.

The Conference substitute adopts a provision that would require the Secretary of Homeland Security to develop a system to detect both undeclared passengers and contraband entering the United States by railroad, with a primary focus on the detection of nuclear and radiological materials and to submit a report to Congress on its progress. The Secretary, in consultation with the TSA, the Domestic Nuclear Detection Office, and Customs and Border Protection, may take a number of actions authorized by the provision to develop this system.

Section 1525. Transmission Line Report

There is no comparable House provision.

There is no comparable Senate provision.

The Conference substitute adopts a provision that would require that the Comptroller General perform the assessment of the security, safety, economic benefits and risks associated with the placement of high-voltage transmission lines along active railroad and other transportation rights of way.

Section 1526. Railroad Security Enhancements

There is no comparable House provision.

Section 1433 of the Senate bill allows police officers employed by a railroad to be deputized to help a second railroad in carrying out enforcement duties on the second railroad. In addition, the provision would require the Secretary of Transportation to write and distribute to States model railroad police commissioning laws to help prevent the problems posed by so-called "scam railroads." "Scam railroads" are companies that are organized as railroads in order to obtain police powers but are not actually engaged in the railroad business.

The Conference substitute adopts the Senate provision as modified to extend the date by which the Secretary of Transportation would be directed to complete the model state legislation.

Section 1527. Applicability of District of Columbia Law to Certain Amtrak Contracts

There is no comparable House provision.

Senate Section 1438 would require that any lease entered into between the National Railroad Passenger Corporation and the State of Maryland be governed by District of Columbia law.

The Conference substitute adopts the Senate provision.

Section 1528. Railroad Preemption Clarification

There is no comparable House provision.

There is no comparable Senate provision.

The Conference substitute adopts a provision that is would to clarify the intent and interpretations of the existing preemption statute and to rectify the Federal court decisions related to the Minot, North Dakota accident that are in conflict with precedent. The modified language restructures 49 U.S.C. §20106 and changes its title from "National Uniformity of Regulation" to "Preemption" to indicate that the entire section addresses the preemption of State laws related to railroad safety and security.

Subpart (a) of the Conference substitute is titled "National Uniformity of Regulation" and contains the exact text of 49 U.S.C. §20106 as it existed prior to enactment of this Act. It is restructured for clarification purposes; however, the restructuring is not intended to indicate any substantive change in the meaning of the provision.

Subpart (b) of the Conference substitute provides further clarification of the intention of 49 U.S.C. §20106, as it was enacted in